

§ 113-423.1. Surface activities.

(a) **Agreements on Rights and Obligations of Parties.** – The developer or operator and the surface owner may enter into a mutually acceptable agreement that sets forth the rights and obligations of the parties with respect to the surface activities conducted by the developer or operator.

(b) **Minimization of Intrusion Required.** – An oil or gas developer or operator shall conduct oil and gas operations in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land. As used in this subsection, "minimizing intrusion upon and damage to the surface" means selecting alternative locations for wells, roads, pipelines, or production facilities, or employing alternative means of operation that prevent, reduce, or mitigate the impacts of the oil and gas operations on the surface, where such alternatives are technologically sound, economically practicable, and reasonably available to the operator. The standard of conduct set forth in this subsection shall not be construed to (i) prevent an operator from entering upon and using that amount of the surface as is reasonable and necessary to explore for, develop, and produce oil and gas and (ii) abrogate or impair a contractual provision binding on the parties that expressly provides for the use of the surface for the conduct of oil and gas operations or that releases the operator from liability for the use of the surface. Failure of an oil or gas developer or operator to comply with the requirements of this subsection shall give rise to a cause of action by the surface owner. Upon a determination by the trier of fact that such failure has occurred, a surface owner may seek compensatory damages and equitable relief. In any litigation or arbitration based upon this subsection, the surface owner shall present evidence that the developer's or operator's use of the surface materially interfered with the surface owner's use of the surface of the land. After such showing, the developer or operator shall bear the burden of proof of showing that it minimized intrusion upon and damage to the surface of the land in accordance with the provisions of this subsection. If a developer or operator makes that showing, the surface owner may present rebuttal evidence. A developer or operator may assert, as an affirmative defense, that it has conducted oil or gas operations in accordance with a regulatory requirement, contractual obligation, or land-use plan provision that is specifically applicable to the alleged intrusion or damage. Nothing in this subsection shall do any of the following:

- (1) Preclude or impair any person from obtaining any and all other remedies allowed by law.
- (2) Prevent a developer or operator and a surface owner from addressing the use of the surface for oil and gas operations in a lease, surface use agreement, or other written contract.
- (3) Establish, alter, impair, or negate the authority of local governments to regulate land use related to oil and gas operations. (2012-143, s. 4(e).)